

REMARKS

Reconsideration of the present application in view of the above amendments and following remarks is respectfully requested.

Status of the Claims

Claims 26, 28-30, 32-34, 36-37 and 39-41 are presented. Claims 26 and 36-37 are amended. Claim 26 is amended to add the limitation that the agrochemical comprises a water-soluble or substantially water-soluble agrochemical. Support is found in the specification as originally filed, *inter alia*, on page 3, lines 26-28, and page 9, lines 30-31. Claims 36-37 are amended for clarity.

No claims are cancelled. New claim 41 is added. Support is found in the specification as originally filed, *inter alia*, on page 10, lines 8-10, and the Example.

No new matter has been introduced.

Summary of the Invention as Claimed

As presently amended, the claims are directed to a method for treating plants with an agrochemical comprising spraying the plants with the agrochemical in combination with a micro-emulsion which consists essentially of (a) an oil phase, (b) a hydrophilic emulsifier, (c) a lipophilic co-emulsifier, and (d) water. As now claimed, the agrochemical comprises a **water-soluble or substantially water-soluble agrochemical** (claim 26). In preferred embodiments the agrochemical comprises a glyphosate herbicide or salt thereof (claims 37 and 41).

Rejections under 35 U.S.C. § 103(a)

Previously pending claims 26, 28-30, 32-34, 36-37 and 39-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Capuzzi et al. (US 5,905,072; "Capuzzi") and Auda et al. (US 6,586,366; "Auda"). This rejection is respectfully traversed.

Capuzzi discloses adjuvants for **systemic fungicides** in the form of a microemulsion comprising 10-30% water, 20-50% of a mixture of methyl esters of fatty acids, 0.5-20% of **anionic** surfactant, 5-20% of at least one nonionic surfactant having an HLB of 13-18 and a specific cloud point, which may be an alkyl polyglucoside, and 5-25% of at least one nonionic surfactant with an HLB of 10-12. It is noted that Capuzzi requires an **anionic** surfactant, selected from alkylbenzenesulfonates, alkylsulfosuccinates, and their metal salts, in contrast to applicants' claims.

Even though applicants do not necessarily agree with the Examiner's characterizations of Capuzzi, in order to further prosecution, the claims have been amended in a way which moots the Examiners rejection. Thus, base claim 26 has been amended to limit the agrochemical to **a water-soluble or substantially water-soluble agrochemical**.

In contrast, Capuzzi is drawn to adjuvants for, and compositions containing **systemic fungicides**. Systemic fungicides useful with the adjuvants of the invention are particularly represented by tetraconazol, chlozolinate and benalaxyl (column 3, lines 38-42). As disclosed in the appended entries from The Pesticide Manual, Fourteenth Edition, British Crop Production Council, 2006, all of these pesticidal active ingredients are essentially **insoluble in water** and have a high octanol/water partition coefficient, LogP (high LogP correlates with insolubility in water; low LogP correlates with water solubility). Although the water-solubility and LogP values for chlozolinate are not listed in this particular edition of the monograph, one skilled in the art would recognize from the chemical structure alone [(±) ethyl 3-(3,5-dichlorophenyl)-5-methyl-2,4,-dioxo-5-

oxazolidinecarboxylate] that the compound would have low water solubility and a relatively high LogP. Therefore, one skilled in the art would not look to Capuzzi for adjuvants and formulations suitable to **water-soluble** or **substantially water-soluble** pesticidal active ingredients, without the benefit of applicants' disclosure.

Further, applicants submit that Auda is not prior art under 35 U.S.C. § 102. Applicants respectfully point out that the present application claims the benefit of Provisional Application No. 60/453,768, filed on March 11, 2003. Applicants believe that a priority claim under 35 U.S.C. §119(e) and §120 has been perfected, M.P.E.P. §706.02. Auda issued on July 1, 2003, that is, after applicants' priority date. Therefore, Auda, should be disqualified as prior art to the present application.

Once Auda is disqualified as prior art under 35 U.S.C. § 102, applicants respectfully submit that the Examiner has failed to establish a case of *prima facie* obviousness over Capuzzi.

For the preceding reasons, applicants believe that Capuzzi, in the absence of Auda, fails to teach, either expressly or inherently, all of the claim limitations for applicants' pending claims as presently amended. Accordingly, the rejections under 35 U.S.C. § 103(a) are improper. Thus, applicants respectfully request the withdrawal of the rejection.

Conclusion

In summary, in view of the above claim amendments and remarks, Applicants believe that the pending claims as presently amended are in condition for allowance, or alternatively, in better condition for consideration on appeal. The Examiner is respectfully requested to reconsider, withdraw the rejections and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

Respectfully submitted,

September 22, 2009

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